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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the matter of	)	
	)	
Implementation of Section 309(j) of the	)	MM Docket No. 97-234
Communications Act -- Competitive Bidding	)	
for Commercial Broadcast and Instructional	)	
Television Fixed Service Licenses	)	
	)	
Reexamination of the Policy Statement on	)	GC Docket No. 92-52
Comparative Broadcasting Hearings	)	
	)	
Proposals to Reform the Commission's	)	GEN Docket. No. 90-264
Comparative Hearing Process to Expedite	)	
the Resolution of Cases	)	

To: The Commission

COMMENTS OF THE  
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS

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To: The Commission

**COMMENTS OF THE  
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS**

The Association of America's Public Television Stations ("APTS") respectfully submits these comments in opposition to the proposal in paragraph 50 of the *Notice of Proposed Rulemaking* in the above-captioned proceeding, released November 26, 1997 (the "*Notice*") to subject noncommercial educational applicants to auctions when they apply for non-reserved channels and those applications are mutually-exclusive with applications of commercial applicants.

APTS is a nonprofit membership association whose members comprise most of the nation's 353 public television stations. Among other things, APTS represents its membership on a national level by presenting the stations' views to the Commission,

Congress, the Executive Branch and to other federal agencies and policy makers. It is submitting these Comments on behalf of its members. APTS is aware that comments are being filed by National Public Radio ("NPR"), the Corporation for Public Broadcasting ("CPB") and other public broadcasting entities addressing the impact of this proposal on them or their members. APTS supports the positions advanced in those comments.

#### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The Commission's proposal to require noncommercial educational licensees to participate in auctions when they seek authorizations which are mutually exclusive with commercial applicants is inconsistent with the provisions of the Balanced Budget Act of 1997.<sup>1</sup> That section precludes the use of auctions where noncommercial educational broadcast applicants are involved regardless of whether the channel sought is reserved for noncommercial educational use.

Further, the proposal is inconsistent with the 35-year Congressional policy of extending public broadcast service to all the residents of the United States and the 30 years of federal financial support for public broadcasting. As the Commission is aware, there are no reserved channels for secondary broadcast services and thus noncommercial applicants find that their applications for translators are mutually exclusive with applications of commercial applicants. Given public broadcaster's limited financial resources, they cannot compete successfully with commercial broadcasters in a competitive bidding situation. Indeed, requiring them to pay for

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<sup>1</sup> P.L. No. 105-33, §3002(a)(2), 111 Stat. 251, 258 (1997) (the "Budget Act").

their channels will only divert resources from programming and other services. It may also impair the ability of noncommercial educational licensees to finance the transition to digital television.

Rather than subjecting those applicants to auctions, the Commission should establish a separate procedural track for noncommercial educational broadcast applicants, regardless of the channel sought. That approach will insulate them from competitive commercial applications. That separate track should also be used for modifications of existing facilities.

The considerations militating against the use of auctions for noncommercial educational broadcast applicants apply with equal force to ITFS applicants. By definition they come within the Section 309(j)(2)(C) exemption and requiring them to participate in auctions will only divert scarce funds from educational purposes.

Finally, the Commission should reaffirm its decision in the DTV proceeding to allow television translator stations displaced by DTV stations to apply for a new channel on a first-come, first-served basis.<sup>2</sup>

#### ARGUMENT

#### **I. Noncommercial Educational Broadcast Applicants May Not Be Required to Participate in Auctions Under Section 309(j)(2)(C).**

In its *Notice*, the Commission recognizes that Section 309(j)(2)(C) of the Communications Act exempts applications for noncommercial educational broadcast stations from auctions and, thus, precludes the use of auctions to resolve comparative

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<sup>2</sup> See *Sixth Report and Order*, in MM Dkt. No. 87-268, 12 FCC Rcd. 14,588 (¶ 144) (1997) ("*Sixth Report and Order*").

proceedings between noncommercial educational applicants.<sup>3</sup> The Commission implements this provision where applications are filed for full-power stations operating on reserved channels and arguably when two or more noncommercial educational applicants seek a television translator authorization.<sup>4</sup>

However, in paragraph 50, the Commission states that it will use auctions to resolve comparative proceedings involving applications for commercial frequencies, even where a noncommercial educational broadcast applicant is involved.<sup>5</sup> That proposal is inconsistent with the express language of Section 309(j)(2)(C), with the Commission's statements earlier in the *Notice* that auctions would not apply to noncommercial applications, and with the 35-year history of federal support for public broadcasting. While it could effect some applicants for full-service facilities, the

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<sup>3</sup> *Notice* at ¶ 5 n. 1 and ¶ 10 n.7.

<sup>4</sup> Footnote 7 of the *Notice* states that auctions will be used for mutually exclusive applications for secondary services only where the commercial entities are involved. *See Notice* at ¶ 10 n.7. The Commission did not specifically address how it would resolve mutually exclusive noncommercial applications, but it appears, from this footnote, that the Commission does not intend to use auctions.

<sup>5</sup> The paragraph reads as follows:

Also, whether particular applications are subject to the proposed competitive bidding procedures will *depend on whether the broadcast service is required to be auctioned under amended section 309(j)(1), rather than on the identity of the mutually exclusive applicants*. Thus, we propose to treat non-profit applicants for commercial frequencies, including those who could qualify under 47 C.F.R. § 73.503 as a non-profit educational organization, no differently under the filing an competitive bidding procedures than any other mutually exclusive applicant for commercial frequencies.

*Notice* at ¶ 50. (emphasis added).

Commission's proposal will have a particularly adverse impact on the ability of noncommercial educational licensees to obtain television broadcast translator stations since no spectrum has been reserved for those stations. It will also, as NPR discusses in its comments, have a significant adverse effect on noncommercial educational radio stations.

**A. The Statutory Language of Section 309(j)(2)(C) Exempts All Noncommercial Educational Applications From Auctions**

By its terms, Section 309(j)(2)(C) precludes the Commission from adopting the proposal in paragraph 50. That section provides that "[t]he competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission -- (C) for stations described in Section 397(6) of this Act."<sup>6</sup> Section 397(6) provides:

The terms "noncommercial educational broadcast station" and "public broadcast station" means a television or radio broadcast station which --

(A) under the rules and regulations of the Commission in effect on the effective date of this paragraph is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or

(B) is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.<sup>7</sup>

Nothing in this definition limits noncommercial educational broadcast or public broadcast stations to those operating on reserved channels. Rather, the definition is

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<sup>6</sup> 47 U.S.C. § 309(j)(2)(C)(West, Westlaw through P.L. No. 105-41).

<sup>7</sup> 47 U.S.C. § 397(6)(West, Westlaw through P.L. No. 105-41).



written in terms of a station's "eligibility" to hold a noncommercial educational broadcast license, without any reference to reserved channels. This construct was intentional since Congress was aware that the Commission had licensed stations operating on non-reserved channels as noncommercial educational stations. Since Section 397(6) defines the class of entities eligible to receive funds under Section 396 from CPB and under Section 392 from the Public Telecommunications Facilities Program,<sup>8</sup> Congress wanted to be certain that these stations would be eligible for assistance under these programs. Had Congress intended to limit the definition of a noncommercial educational broadcast or public broadcast station to those operating on reserved channels, the definition could have been much simpler. Thus, it is clear that Section 397(6) encompasses stations, including translators, operating on "commercial" or non-reserved channels.<sup>9</sup>

Thus, Congress' use of that definition in the Budget Act makes the Section 309(j)(2)(C) exemption applicable to any application by a noncommercial educational broadcast station regardless of the channel on which it might operate. As a result, the

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<sup>8</sup> Two notable examples of noncommercial educational stations operating on nonreserved channels were WNET-TV, the flagship public television station serving New York City, and WNYC-TV, New York. Indeed, subsection (B) of Section 397(6) is expressly designed to include Station WNYC-TV since New York City is not eligible under the FCC's rules to operate on a reserved channel. *See*, 47 C.F.R. § 73.621 (1997). Since Section 397(6) was enacted, Station WNYC-TV has been sold to a commercial operator and is no longer operating as a noncommercial station.

<sup>9</sup> Under the Commission's rules, television translator stations are broadcast stations. *See* 47 C.F.R. § 74.701(a) (1997).

Commission's suggestion in paragraph 50 is precluded by the statute, and auctions may not be used when a noncommercial applicant seeks a non-reserved channel.<sup>10</sup>

**B. The Theory Behind Auctions Does Not Apply to Noncommercial Educational Applicants**

Subjecting applications by noncommercial educational entities to auction is not only inconsistent with the language of Section 309(j)(2)(C) but is also inconsistent with the rationale underlying Congress's decision to authorize use of auctions. Congress decided to allocate spectrum through auctions for three reasons, two of which are not applicable to public broadcast licensees. First, it concluded that, as a market solution, competitive bidding would ensure that the spectrum is put to "its highest and best use."<sup>11</sup> As noted in the House Report on the Budget Act, "Auctions . . . ensure that licenses are assigned to the entity that most values the frequencies. Consequently, consumers now enjoy the benefits of new and improved services that are offered in a more price-competitive marketplace."<sup>12</sup> Second, in this era of fiscal austerity, Congress wanted commercial licensees to pay for their use of the spectrum, which is a public resource.<sup>13</sup>

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<sup>10</sup> This interpretation of the Section 309(j)(2)(C) also comports with the Commission's own recognition earlier in the *Notice* that, "under Section 309(j), the Commission may not use auctions for noncommercial educational broadcast stations," *Notice*, at ¶ 5 n.1, and that "[o]nly commercial stations [in the secondary broadcast] services will be covered" by the auction proposal. *Id.* at ¶ 10 n.7.

<sup>11</sup> H.R. Conf. Rep. No. 105-217, at 573 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 193 (accompanying the Balanced Budget Act of 1997); *see also* H.R. Rep. No. 105-149, at 558 (accompanying the Balanced Budget Act of 1997).

<sup>12</sup> H.R. Rep. No. 105-149, at 588.

<sup>13</sup> *See Id.* (describing how auctions contribute to deficit reduction).

Neither of these rationales applies to public broadcasters.<sup>14</sup> First, federal and state governments support public broadcasting precisely because the market will not do so.<sup>15</sup> This action reflects a legislative determination -- made consistently over 35 years not only by the Federal government but also by numerous state governments<sup>16</sup> -- that public broadcasting serves a great social value notwithstanding its inability to compete in the private marketplace. Given this broadly-based legislative finding, it makes no sense for the Commission to judge the merit of a noncommercial educational broadcaster's application by the size of the broadcaster's bank account.

Second, requiring public broadcasters to bid competitively will divert scarce public dollars from providing the services to viewers for which the money was appropriated. If Congress had intended to cut the appropriation for public broadcasting -- as many had proposed only recently -- it surely would have done so directly.<sup>17</sup> It would have been absurd for Congress to adopt the circuitous,

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<sup>14</sup> The third reason, administrative efficiency, is arguably relevant to all proceedings. See H.R. Rep. No. 105-149, at 558 (1997). However, the alternative we propose in Section III below is also administratively efficient.

<sup>15</sup> See 47 U.S.C. § 396(a)(7) (West, WESTLAW, through Aug. 13, 1997) (congressional finding that "it is *necessary* and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States" (emphasis added)). This inability to compete is especially severe given the present prohibition on airing advertisements. See 47 U.S.C. § 399b(b)(2) (1994); (prohibiting public broadcast stations from broadcasting advertisements).

<sup>16</sup> Currently, 49 state governments providing funding for public television stations.

<sup>17</sup> Congress publicly reaffirmed its financial support for public broadcasting in 1995 after the American people rallied against proposed cuts. The Commission should not undo the public's legislative success by administrative action nor should it assume that Congress intended to achieve that result.

administratively inefficient, and untargeted route of cutting appropriations for public broadcasting by forcing public broadcasters to repay a portion of their governmental subsidies by bidding for spectrum. The Commission should not assume that Congress intended such a result.<sup>18</sup>

Lastly, requiring noncommercial educational broadcast stations to bid for spectrum is inconsistent with the long-term Congressional and Commission policies of exempting public broadcasters from filing and regulatory fees.<sup>19</sup> In light of the relatively small amount of the fees due to the Commission as compared to the likely cost of securing a broadcast authorization in an auction, it makes no sense for Congress and the FCC to exempt public broadcasters from the former, but obligate them to participate in the far more expensive auction process.

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<sup>18</sup> See *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring) (“We are confronted here with a statute which, if interpreted literally, produces an absurd, and perhaps unconstitutional, result. Our task is to give some alternate meaning . . . that avoids this consequence.”).

<sup>19</sup> See 47 U.S.C. §§158(d) (1994) (application fees), 159(h) (1994) (regulatory fees); 47 C.F.R. §§ 1.1114(c), (e) (1997) (application fees), 1.1162(e), (g) (1997) (regulatory fees).

**II. Exempting All Noncommercial Educational Applicants from Auctions Comports With Established Sound Public Policy Concerning Public Broadcasting**

**A. Public Broadcasters Lack the Financial Resources to Compete in Auctions Against Commercial Broadcasters.**

As the Commission knows, noncommercial education broadcasters do not have access to the same type or amount of funds available to their commercial counterparts. Public broadcasters are non-profit licensees which depend upon federal, state, and local government appropriations, corporate and foundation grants, and community campaign drives to cover their operating and capital costs. Those funds are always extremely limited and are especially so in the current environment of fiscal austerity. Unlike their potential auction competitors, public broadcasters do not have access to private financing backed by future advertising profits. Put starkly, subjecting noncommercial education broadcasters' applications to competitive bidding would likely freeze the growth of public broadcasting in the United States.

In fact, it could result in a loss of service where existing public television translator stations are displaced by modifications in the facilities of existing full power stations or new full power stations. In those circumstances, public broadcast stations can find themselves facing mutually-exclusive commercial applications and thus, under the Commission's proposal, an auction. This problem will be aggravated substantially by the Commission's decision to reallocate channels 60 to 69 public

safety services and various commercial uses<sup>20</sup> and by the advent of digital television. Subjecting noncommercial education applicants to competitive bidding against commercial broadcasters would roll back -- not merely freeze -- the growth of public broadcasting in this country.

Moreover, requiring public broadcasters to bid for translator spectrum merely to preserve their ability to continue serving existing viewers will also impede their ability to convert to digital television. As APTS and the Public Broadcasting Service ("PBS") noted at length in the filings in their FCC's ATV proceeding, the costs of converting to DTV and the need to operate two television stations simultaneously will tax the financial ability of public television licensees, particularly the smaller stations, which typically serve remote areas.<sup>21</sup> However, those are the licensees most dependent on translators and thus most likely to find themselves in an auction under the Commission's proposal.

**B. Television Broadcast Translator Stations Are Crucial to Nationwide Access to Public Television Broadcasting.**

As public television has demonstrated in its filings in the DTV proceeding,<sup>22</sup> television broadcast translator stations play a vital role in providing public television

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<sup>20</sup> See *Reallocation of TV Channels 60 to 69*, 1998 WL 2533 (1998).

<sup>21</sup> See Comments of the Association of America's Public Television Stations and the Public Broadcasting Service to *Sixth Further Notice of Proposed Rule Making*, in MM Docket No. 87-268, at 15-16 (Nov. 22, 1996).

<sup>22</sup> See, e.g., *Pet. for Reconsideration and Clarification* of Association of America's Public Television Stations and Public Broadcasting Service, *Fifth Report and Order* and *Sixth Report and Order*, in MM Dkt. No. 87-268, at 7-9 (Jun. 13, 1997) [hereinafter *Pet. for Recons. and Clarification*].

services to rural, sparsely populated areas of the United States. State public television networks typically strive to provide service to their entire state without regard to the population density of any area. In many parts of the country, it simply is not practical to accomplish this goal with full-power facilities. These networks, thus, frequently use translators as the only economically and technically feasible means of providing public television service to thinly populated regions. Other public television stations also use translators to reach unserved areas outside their Grade B contours and to serve areas within their Grade B contours that cannot, due to terrain or other factors, receive a reliable signal.

Currently, 120 public television stations -- about one third of all public television stations -- use 787 translators to bring public television services to areas where there is no other over-the-air service and often no cable service. The loss of significant numbers of these stations will deprive residents of these rural areas of their only public broadcast service -- and the diversity of programming and educational resources (*e.g.*, distance learning) that it brings.

**C. Subjecting Noncommercial Educational Broadcasters to Auctions Is Inconsistent with Congress' Longstanding Support For Nationwide Public Television Service**

For 35 years Congress has pursued the goal of nationwide public television service. In 1962 it adopted the Educational Television Facilities Act, authorizing funds for the construction of educational television stations to ensure service to "the greatest number of persons."<sup>23</sup> Congress reiterated this policy in the Public

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<sup>23</sup> P.L. 87-447, §392(d), 76 Stat. 64, 66 (1962).

Broadcasting Act of 1967,<sup>24</sup> which provided additional funding to "improve the facilities and program quality of the Nation's educational broadcasting stations."<sup>25</sup> More recently, Congress enacted the Public Telecommunications Facilities Act of 1992,<sup>26</sup> which added a new section to the Communications Act, declaring:

[I]t is in the public interest for the Federal Government to ensure that *all citizens* of the United States have access to public telecommunications services through *all appropriate, available* telecommunications distribution technologies.<sup>27</sup>

Thanks to such persistent congressional support, public television now reaches about 97% of American households. To realize the ultimate objective of nationwide service -- and to keep from losing ground -- will require new translators. If the Commission were to interpret Section 309(j) to permit holding an auction when a noncommercial education broadcaster and a commercial broadcaster submit mutually exclusive translator applications, it would virtually foreclose new public television broadcast translators. Such an interpretation would undermine Congress' clear and consistent intention to foster nationwide public broadcast service.

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<sup>24</sup> 47 U.S.C. §390 (1994).

<sup>25</sup> S. Rep. No. 90-222, at 1 (1967), *reprinted in* 1967 U.S.C.C.A.N. 1772.

<sup>26</sup> P.L. No. 102-356, 106 Stat. 949 (1992) (codified as amended in scattered sections of 47 U.S.C.)

<sup>27</sup> 47 U.S.C. § 396(a)(9). (emphasis added) This policy is also reflected in the Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-385, 106 Stat. 1460 (codified as amended in scattered sections of 47 U.S.C.), which requires cable carriage of public television programming, 47 U.S.C. § 615 (1994), and the reservation of capacity on direct broadcast satellites for "noncommercial . . . educational or informational" programming, 47 U.S.C. § 335(b) (1994).



### **III. The Commission Should Treat Applications By Noncommercial Educational Broadcast Applicants on a Separate Track From Commercial Broadcast Applications**

In light of the clear statutory mandate to exempt applications by noncommercial educational broadcast stations from auctions and the overwhelming policy considerations outlined above, APTS urges the Commission to establish a separate processing track for applications by noncommercial educational broadcast entities -- one that is distinct from the procedures used for commercial applicants. By treating noncommercial educational and commercial entities on distinct tracks, the Commission would avoid the possibility of competing applications by noncommercial educational and commercial applicants.

Specifically, the Commission should allow noncommercial educational entities to apply for authorizations, particularly authorizations for television translator stations, outside the filing windows proposed in the *Notice*. Under this proposal, noncommercial educational stations could file for a construction permit at any time. Once a technically acceptable application is filed, the channel would be deemed reserved for noncommercial educational use and only other noncommercial applicants would be permitted to file for the channel requested or for channels that would be mutually exclusive with that channel.<sup>28</sup> The application would be processed using the

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<sup>28</sup> In order to insure that "noncommercial educational" applicants are *bona fide*, the Commission should restrict any transfer of the station by the successful noncommercial applicant to another noncommercial educational entity. Any effort to transfer the station to a commercial entity would open the channel for competitive bidding by other commercial applicants.

cut-off procedures the Commission currently employs for low power television and translator stations.<sup>29</sup>

Use of this procedure is administratively efficient and would further Congress' objective of nationwide access to public broadcasting service. It would also avoid the difficult procedural issues the FCC would have to address if noncommercial and commercial applications are to be considered together in a comparative proceeding. Since the noncommercial applicant may not be required to participate in an auction, the Commission will have to use another mechanism for resolving the comparative proceeding. While a lottery may be a possibility,<sup>30</sup> APTS believes that a streamlined comparative hearing<sup>31</sup> or a point system similar to that used for ITFS applications or by NTIA in awarding PTFP grants would better serve the public interest.<sup>32</sup> In any event, establishing the separate track for noncommercial applicants avoids the need to resolve that issue in this proceeding.

This procedure should be used for both applications for new facilities and for applications to modify the facilities of noncommercial educational broadcast stations.

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<sup>29</sup> Alternatively, the Commission could adopt separate filing windows for noncommercial and commercial applications.

<sup>30</sup> It is arguable that, given the limited lottery authority granted the Commission, it would be required to use comparative hearings. *See* 47 U.S.C. §309(i)(5).

<sup>31</sup> APTS suggested revised criteria for noncommercial comparative hearings in comments filed in the Commission's proceeding looking toward the adoption of new comparative criteria for noncommercial broadcast applicants. *See* Comments of Association of America's Public Television Stations in MM Docket No. 95-52, October 15, 1995). That proceeding is still pending before the Commission.

<sup>32</sup> *See* Comments filed by NPR in this proceeding at pp. 18-20.

The same considerations underlying the use of this separate procedure for new stations apply equally, if not with greater force, to modifications. Those stations are currently serving a community or communities, and that service should not be lost because of by auctions when a full power television station commences operation or modifies its facilities.

#### **IV. Mutually Exclusive ITFS Applicants Should Not Be Required to Participate in Auctions**

In its *Notice*, the Commission sought comment on whether it is required to use auctions to resolve mutually exclusive applications for ITFS applicants.<sup>33</sup> APTS supports the position of CPB and the other educational institutions filing comments in this proceeding and urges the Commission not to require those applicants to participate in auctions.

The legal and policy considerations set forth above as to why noncommercial educational broadcast station should not be required to participate in auctions apply equally to applicants for ITFS facilities. First, the Budget Act precludes the use of auctions where ITFS applications are involved. As noted above, the definition in Section 397(6) is written in terms of "eligibility" to hold a noncommercial educational broadcast license and applicants for ITFS facilities clearly satisfy those requirements. Section 74.932 requires ITFS applicants to be accredited institutions, governmental educational organizations or nonprofit educational organizations providing instructional

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<sup>33</sup> *Notice* at ¶¶ 98-100.

programming to accredited institutions.<sup>34</sup> Applicants which satisfy those criteria also meet the eligibility criteria in Section 73.621 for noncommercial educational authorizations.<sup>35</sup> Thus, it is clear that any entity that is eligible to hold an ITFS license is "eligible to be licensed by the Commission as a noncommercial educational broadcast station and which is owned and operated by a public agency or nonprofit . . . corporation, or association," as required by Section 397(6). Indeed, many public television licensees hold ITFS authorizations, using them to provide instructional material to schools and others.

Second, ITFS applicants do not have the funds to participate in auctions for ITFS facilities, and requiring ITFS applicants to pay for their spectrum will only divert limited resources from instructional programming and the in-school facilities needed to use ITFS spectrum. Subjecting ITFS applicants to auctions will also make them more dependent on wireless cable operators and others who wish to use the spectrum for commercial purposes. Accordingly, for all these reasons, the Commission should exempt mutually exclusive ITFS applications from the auction process and continue to resolve them in accordance with its current rules.

#### **V. The Commission Should Reaffirm Its Decision to Protect Television Translator Stations That Are Displaced by DTV Authorizations**

The Commission requested "comment on whether we should treat as subject to auction under section 309(j)(1) mutually exclusive applications for major modifications

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<sup>34</sup> See 47 C.F.R. §74.932.

<sup>35</sup> See 47 C.F.R. §73.621.

of existing . . . television . . . translator facilities, as well as applications for minor modifications, which can be mutually exclusive in certain rare instances."<sup>36</sup> Since the Commission did not note its action in its *Sixth Report and Order* allowing displaced television translator stations "to apply for a suitable replacement channel in the area without being subject to competing applications."<sup>37</sup> APTS is concerned that this might be interpreted as a proposal to reconsider that decision. Under the *Sixth Report and Order*, applications by displaced translators would be considered on a first-come first-served basis without waiting for a window to open.<sup>38</sup>

APTS urges the Commission to reaffirm its decision to protect displaced translators. This will, in turn, minimize the risks of competitive applications and reduce the need to use auctions. The Commission's implementation of digital television and its decision to re-allocate channels 60-69 to public safety services and commercial uses will displace substantial numbers of noncommercial education broadcast television translators. It has been estimated that 2,048 translators and low power stations (about 25 percent of those operating) will be displaced by the DTV allotments and that another 1,475 stations would be displaced by the early reallocation of channels 60-69. Although the Commission has disputed these numbers, it does not deny that those two decisions will have a substantial impact on television translator services. In order for public television to maintain the current coverage of the United

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<sup>36</sup> Notice at ¶ 47.

<sup>37</sup> *Sixth Report and Order* at ¶ 144.

<sup>38</sup> See *id.*

States -- 97% of the homes -- noncommercial education broadcasters will need to file hundreds of amendments or modifications to their licenses to relocate translators displaced by new DTV stations. If the Commission were to permit competitors to file mutually exclusive applications -- let alone subject these applications to competitive bidding -- the geographic reach of public television service in the United States could contract markedly.<sup>39</sup>

### CONCLUSION

For the reasons presented above, APTS respectfully requests that the Commission (1) exempt all noncommercial educational broadcast and ITFS applications from any auction proceedings, (2) adopt a separate processing track for noncommercial educational broadcast applications so that noncommercial educational

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<sup>39</sup> For similar reasons, APTS and PBS have requested the Commission to give public television translators a preference over low power television stations and other translators. *See Pet. for Recons. and Clarification* at pp. 7-9.

applicants will be involved only in comparative proceedings among noncommercial educational applicants and (3) reaffirm its decision to allow television translators displaced by DTV stations and the reallocation of Channels 60 to 69 to obtain new channels on a first-come first-served basis.

Respectfully submitted,



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